IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.3872 OF 2006

Vinod Dagdu Rathod .. ..Applicant

Versus

State of Maharashtra .. ..Respondent

Mr.A.S.Khandeparkr for applicant

Mr.S.S.Pednekar, APP for respondent

CORAM : S.C.DHARMADHIKARI,J.

DATE : 6TH NOVEMBER, 2006

P.C.:

1. This is an application for anticipatory bail.

2. Applicant is a Police Constable apprehending arrest in connection with C.R.no.385 of 2006, which is registered at Bundgarden Police Station in Pune District.

The offences are punishable under Sections 366 and 376 of the Indian Penal Code.

3. The Complainant in her statement has alleged that her daughter is residing with her and her husband in Pune District. However, the complainant, her daughter and two sons had gone to Complainant's in-laws place in Solapur District for village Fair. At that time the complainant's relations suggested that applicant is of a marriageable age and applicant's name was suggested to the complainant by her relations. At that time, it is alleged that the complainant was contemplating marriage of her daughter. Thereafter, applicant and his parents came to the residence of complainant and approved of the relationship. After preliminary talks, it is alleged that the match was approved and a small ceremony was held. Thereafter, complainant alleges that applicant was posted at Thane, but on every Wednesday he used to come to Pune and visit their place. He took complainant's daughter along with himself to places nearby Pune. Since the marriage was fixed and was to be solemnised soon no objection was raised.

4. However, when the complainant and her family had

once again gone to Solapur to attend the marriage ceremony of cousin sister of the applicant, it is alleged that the applicant took the daughter of the complainant out and both of them went around for some time in Solapur as well.

5. A specific allegation is made that during such visit at Pune and Solapur the applicant under the promise of marriage, had sexual intercourse by force and that is how the FIR was lodged on 6.9.2006.

6. The applicant being a Police Constable has his own version of the matter. He states that a false complaint was lodged against him by disgruntled parents since the marriage could not be solemnised. The applicant comes from a relatively poor family and the match was not approved. Thereafter, the applicant has been engaged to another girl and subsequently married her. The Applicant was apprehending all through out that a false complaint would be lodged against him by the disgruntled parents of the victim/prosecutrix and in such circumstances, made applications/representations to the higher police officials.

7. Mr. Khandeparkar, submits that the FIR is lodged

as an after thought and malafide, since the marriage could not took place, as agreed. The parents are agitated and therefore, approached the police with a false case. Mr. Khandeparkar, submits that in such false case if the applicant is arrested, he is likely to loose his job in the police Department. In such circumstances, the ingredients of Section 438 of Criminal Procedure Code are satisfied and this is a fit case where pre-arrest bail be granted. More so, when the applicant is willing to cooperate in the investigation.

8. Since the application for pre-arrest bail was rejected by the trial court and the matter was moved before vacation, I had adjourned the same to enable the learned APP to take instructions.

9. The learned APP has produced before me the statement of the victim/prosecutrix. She has very clearly stated that Sexual Intercourse took place at Khadakwasla in Pune District so also when she had been to Solapur along with her parents. All through out she accompanied the applicant because the applicant was going to marry her as agreed between the families. She has narrated that the Intercourse was forced and without her consent. She has

pointed out that the acts continued from May 2006 till 20th August, 2006.

10. With a view to satisfy myself I perused the statement of the prosecutrix so also her mother. I have perused the medical certificate. The concerned Medical Officer has opined that the age of the victim/prosecutirx is more than 15 years but less than 17 years. There is an evidence of sexual intercourse as opined in this report. The final opinion is that there is Evidence of multiple vaginal intercourse. The conclusion is that the Clinical and Radiological examination for the age of the victim shows that she has completed 15 years but is less than 17 years.

11. At this stage it is not for me to go into the evidentiary value of the materials collected till date. The investigations are still in progress. The applicant has not been arrested till date. In such circumstances, and when the law on the point is very clear, it would not be proper to grant pre-arrest bail. In my view, custodial interrogation would be necessary to ascertain several aspects of the matter. In my view, the statement of the victim at this stage cannot be disbelieved. There may be

complaints made to the higher-ups by the applicant but it is not necessary to probe further, namely, whether they were made to scuttle the investigation and avoid arrest or on account of any genuine grievance. Once the opinion of the medical officer after thorough examination of the victim as above, is on record, it is not possible to accept the submission of Shri Khandeparkar that the complaint is false and malafide and resulting from refusal of the applicant to marry the victim.

12. Ingredients of Section 438 of Cr.P.C. are thus not satisfied. The exceptional relief claimed cannot be granted in the facts and circumstances of the present case. The Application is therefore rejected.

13. At the request of Shri Khandeparker, ad-interim order directing not to arrest the applicant shall continue for a period of two weeks provided the applicant, who is present in the court files an undertaking in this court that during this period he shall attend the concerned Police Station i.e. Bundgarden Police Station, on 8th November, 10th November and 13th November, 2006. Needless to state that in default of filing of this undertaking so also breach of the same would entail in this protection

being cancelled forthwith without reference to this court. Time to file undertaking is granted till 7th November, 2006.

14. Needless to further add that all observations are made merely to consider the application for pre-arrest bail. The trial court shall consider the application for regular bail on its own merits and in accordance with law uninfluenced by the observations made earlier by it so also by this court.

(S.C.Dharmadhikari,J.)